Author Accepted Manuscript (AAM)

'The Version of Record of this manuscript has been published and is available Global Affairs, 21 Dec 2018, https://doi.org/10.1080/23340460.2018.1535252

Heidi Maurer & Jost-Henrik Morgenstern-Pomorski (2018). The Quest for Internal Legitimacy: The EEAS, EU delegations and the contested structures of European diplomacy. Global Affairs, 4(2-3), 305-316.

The Quest for Throughput Legitimacy: The EEAS, EU delegations and the contested structures of European diplomacy

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Abstract (150 words)

The European External Action Service (EEAS) and its EU delegations have developed the notion of 'being of service to EU member states' in EU foreign policy making as their unique selling point for the past eight years. In this paper, we discuss how the EEAS and its delegation network sought to establish throughput legitimacy and why being considered legitimate is a particular concern for them. We trace the conflicting expectations of 'roles' expressed during the Convention on the Future of Europe and the Lisbon Treaty and show how the EEAS and EU delegations responded to treaty implementation. Because the EEAS and EU delegations were treated as separate parts during the discussions of the time, we are able to compare how different levels of role contestation lead to different strategies for legitimacy construction in practice.

Keywords: European Union; European External Action Service; EU delegation, EU foreign policy, European diplomacy; role theory;

1. Introduction

> "With its 5 000-strong staff, the EEAS will never be in a position to fully replace the approximately 60.000 diplomats that the Member States have posted around the world, but the EEAS must increasingly become the hub of collective European diplomacy – if it is to be taken seriously by the rest of the world in serious issues." - Farewell Speech by Foreign Minister Carl Bildt at the Swedish Institute of International Affairs, Stockholm, 29 September 2014

The Lisbon Treaty (2009) aimed at making EU foreign policy-making more coherent, more efficient and more unitary. As most European foreign policy upgrades in the past, the focus has been put on institutional and procedural adaptations in Brussels, with the creation of the European External Action Service (EEAS) and the re-positioning of the High Representative (HR) as chair of the Foreign Affairs Council and Vice-president of the Commission. The Lisbon Treaty innovations also strengthened European cooperation in third countries by upgrading former European Commission delegations to comprehensive EU delegations and strengthening European diplomatic cooperation abroad (Maurer & Bicchi 2018, Edwards 2014). With enough time passed to allow changes to take effect since 2009 (Duke 2009; Missiroli 2010; Vanhoonacker & Pomorska 2013), it is now high time to take a step back and try to grasp the nature of those institutional adaptations and their impact on European foreign policy cooperation and European diplomacy. This paper aims to contribute to our understanding of the EU foreign policy system by looking at the legitimacy construction of the EEAS and its network of EU delegations[1].

The compromise agreed upon in the Constitutional Draft Treaty and adapted in the Lisbon Treaty was to strengthen the diplomatic toolkit of the European Union by establishing the European External Action Service and its network of EU delegations, while at the same time ensuring that the EEAS would not become a 'traditional foreign service' but would assist the High Representative and collaborate strongly with the diplomatic services of the member states, as also the quote above points out. The EEAS was thus meant to deliver an increase in efficacy for European diplomacy, without at the same time looking too much like a traditional diplomatic service that would stand in competition or even take over from member states. As a matter of fact, it was the state-like elements and designations that were removed in the process from Convention draft to Lisbon Treaty such as the title of Union Minister for Foreign Affairs for the EU High Representative. Most documents from the establishment period of the EEAS and the delegation system in 2009-10 focus on procedural and structural aspects, but they do not provide a clear task description and role definition of the new service. For EU delegations, it was clearly the majority view from the start that they would be subsumed under the EEAS and serve as its diplomatic network, but the overall task set was not determined. This lack of clear task descriptions, combined with a lack of vision from Brussels on their

1 In analyzing the legitimacy construction of EU delegations, we focus on bilateral relations. Due to their specific nature and limited space, we are not able to consider the legitimacy of EU delegations in multilateral settings. For details on those see Laatikainen 2015;

role and tasks on the ground in the first years after them turning into EU delegations also created space for bottom-up initiatives and a pragmatic fine-tuning between member states embassies and EU delegation staff.

The European External Action Service (EEAS) and EU delegations have developed the mantra of 'being of service to EU member states' in EU foreign policy making as their unique selling point during the past years, as the empirics presented in this paper illustrate. The aim of the paper is to show how the EEAS and its delegation network sought to establish throughput legitimacy, but also reflect upon the question why the perception of being legitimate is a particular concern for the EEAS and its delegation network. We trace how the idea evolved into the preparations of the EEAS and its institutionalisation. In contrast to the legal analysis of the EEAS, we focus on the challenge of providing the new service with a viable degree of legitimacy. First, we discuss the distinct need of throughput legitimacy construction of the EEAS within the system of European foreign policy cooperation, and provide a short discussion on legitimacy as used in this special issue. We then trace the conflicting expectations of 'roles' expressed during the Convention on the Future of Europe and the Lisbon Treaty and show how the EEAS and EU delegations responded to the practice and contestation of EU foreign policy during treaty implementation. Because the EEAS and EU delegations were discussed separately at the time, we are able to compare what impact different levels of role contestation have for the legitimacy of diplomatic bodies and how these differences also lead to different strategies for the construction of legitimacy in practice. In conclusion, we reflect what this particular process of creating throughput legitimacy for the EEAS and its diplomatic network shows us about the EU as a foreign policy actor. The process of legitimacy construction and acceptance of the EEAS and its delegation network show the boundaries, within which the EEAS and its delegations are situated and have to manoeuvre in the years to come.

2. The relevance of understanding the EEAS legitimacy construction: the boundaries of political control

First conceived as an administrative structure in the Convention on the Future of Europe in 2003-2004, the EEAS was formally established by "Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service" (Council of the European Union 2010). Its legal base was found in treaty provision on the High Representative of the Union for Foreign and Security Policy (Art 27(3) TEU), identifying its first line of responsibility as assisting the High Representative and working "in collaboration with the diplomatic services of the Member States" (Art. 27(3) TEU). The final elements of the provision define in very abstract ways the staffing sources as well as the process by which the service is to be established. Council decision 427/2010 is slightly more forthcoming as to the substantive tasks allotted to the EEAS, despite focusing largely on the administrative structures. It groups four specific tasks, three derived from the High Representatives

position, CFSP and CSDP, presidency tasks derived from the HR acting as chair of the Foreign Affairs Council, and tasks derived from the HR as Commissioner for external relations (Art. 2(1)). Its fourth task is named as providing support to other actors in the policy area of external relations (Art 2(2).

The EU delegations are tasked in the Lisbon Treaty with representing the Union, places them under the authority of the HR/VP and foresees that they "shall act in close co-operation with Member States' diplomatic and consular missions". The Council decision establishing the EEAS emphasizes that the delegations are an integral part of the EEAS (Art. 1(4)), and are meant to "share information with the diplomatic services of the Member States" (Art. 5(8)). Article 5 of this decision outlines some procedural aspects (e.g. line of instructions and personnel), but the role definition of the upgraded delegations is kept rather vague. The 2013 EEAS review acknowledges that "delegations in the field had to transform themselves overnight taking on new roles with no extra resources and without consolidated instructions or advice" (High Representative 2013). Yet, apart from this rather general mention, there were no detailed instructions or strategic plan of how the upgraded delegations should take up their new tasks, even after the EEAS had been officially established in December 2010. It is only since the EEAS review in summer 2013 that the European diplomatic representation in third countries has gained more attention with policy-makers in Brussels.

Legitimacy within the broader EU debate is mostly viewed as an attribute that actors, institutions, or their decisions and actions have or have not. They are a legitimate institution because the treaty tells so. They are a legitimate actor (and thus not an institution) because certain powers and tasks have been delegated to them in a legal act. In public deliberations of EU affairs being a legitimate actor or pursuing a legitimate action is thus taken synonymous with having legal authority, i.e. that an article in the treaties provides the actor with the legal authority to take action in a certain area by applying certain procedures. When applying this perspective to the EEAS, we quickly see the difficulty with applying this generic understanding of legitimacy: the treaty does not really give the EEAS a defined role, but a generic one. At least at the beginning of the EEAS life, it is more "vessel" (i.e. dependent on what others pour in it) than that it provides substance and direction itself. Even before it began to act autonomously, stakeholders attempted to contain it. The turn from organisations *having* legitimacy to organisations (see e.g. Dowling and Pfeffer 1975) and their environment *constructing* legitimacy is also visible in the academic scholarship of organisational and cognitive studies as well as International Relations (Schmidt 2012, Rixen and Viola 2014).

In our analysis of legitimacy construction, we consider four aspects: we take a constructivist approach to the *source* of legitimacy that emphasises that legitimacy is not a given quality, but is constructed by involved stakeholders. We investigate if this *process* of legitimacy construction is smooth or conflictual and if we see variations between the EEAS and the EU delegations. We also consider legitimacy towards *whom*, asking if the focus to gain legitimacy is mainly towards other Brussels-

based actors, or what role national capitals and European citizens play. Last, we ask about the legitimacy construction to do *what*. The academic literature highlights three points that are relevant for our understanding of the EEAS positioning in the system of European foreign policy cooperation.

First, it is relevant to consider if stakeholders consider an actor legitimate because of interest (cognitive legitimacy) or self-interest (pragmatic legitimacy). Hurd (1999: 386-7) suggests that stakeholders can have varying interests that will still lead to strong legitimacy construction. Legitimacy is only weak if it is based on self-interested calculation. Golant & Sillince (2007) take this point forward and suggest that there is too much focus on "pragmatic legitimacy" while the need for cognitive legitimacy (often termed as "moral legitimacy") is underestimated. Cognitive legitimacy is not about self-interest and "assessment of means and ends" but rather about "outcome based on common understanding" (Golant & Sillince 2007: 1150). Cognitive legitimacy is needed, as the legitimacy construction of an organization is otherwise unstable and prone to conflict. The issue now is that "emerging organizations suffer from a cognitive legitimacy deficit." (Golant & Sillince 2007: 1050). This discussion provides us useful considerations for studying the legitimacy construction of the EEAS: we can assume that right at its start the EEAS did not have cognitive legitimacy, but was in need of creating one to being recognised beyond pragmatically legitimate. Being considered legitimate because it fits into the self-interest of the stakeholders (pragmatic legitimacy) is not sufficient in the long run. Internalisation is a key concept in this process of creating sustainable and stable legitimacy. Cognitive legitimacy is reached if an actor is accepted, even if in a particular case it goes against the self-interest of a particular stakeholder. To add to this distinction, we must also consider the less likely alternative that stakeholders simply did not care about the EEAS, which would mean that the EEAS did not hold any form of legitimacy to start with.

Secondly, there is a conceptual difference between organizational legitimacy and organizational reputation. Deephouse and Carter (2005) show that isomorphism and (financial) performance relate differently to legitimacy and reputation. Isomorphism, according to Deephouse and Carter is positively related to legitimacy but has not the same effect on reputation. This implies for our study of EEAS legitimacy construction that legitimacy could be achieved through isomorphism, i.e. by ensure that the EEAS fulfils the role expectations of various actors and looks similar to those organizations that stakeholders have in mind. There are, however, two complications: first of all, as we will show below stakeholders did not agree and held varying, often contradicting expectations. If the EEAS behaves too much like any other diplomatic actor, some stakeholders might consider this against isomorphism, while other stakeholders might miss the differentiation aspect (i.e. no 29th foreign ministry but added value by bringing something to the table that national diplomatic services cannot achieve). If the EEAS, on the other hand, looks and behaves too little like a diplomatic actor but more like an EU agency, yet other stakeholders might find that it does not fulfil its role and thus the EEAS might lose in reputation and thus legitimacy.

Thirdly, a certain expectation of what the EEAS is shapes its legitimacy construction. Is it considered to be a diplomatic, political, or bureaucratic actor? At national level, we nowadays rarely question the existence of Ministries of Foreign Affairs and their diplomatic network. Even though their actions might be criticised, foreign ministries are meant to design and implement foreign policy[2]. But how does the EEAS compare to those 28 foreign ministries? The EU delegations are meant to represent the European Union diplomatically abroad, but they are not meant to replace the diplomatic networks of the member states. Diplomatic roles are clearly defined for national embassies: to represent, to collect information and support understanding of local developments, to communicate and negotiate (Duquet 2018). The distinction taken by this special issue between input, throughout and output legitimacy (reference to intro) provides us with the necessary tools to link the foreign policy and legitimacy discussion. The legitimacy construction of the EEAS relates in particular to the notion of through-put legitimacy in explaining "what goes on inside the ´black box´ of EU governance" (Schmidt 2013: p. 5). Throughput legitimacy, as defined by Schmidt, is "process-orientated and based on the interactions of all actors engaged in EU governance" (Schmidt 2013: p. 5)[3]. Applying the notion of through-put legitimacy allows us to capture the particular nature of the EEAS and its EU delegations, i.e. that this system is meant to act as a facilitator of European foreign policy making within the hybrid foreign policy system of the European Union (Smith 2012, Smith 2018). This means that it does not fit the usual categorisations of foreign policy actors, and thus also not their way of gaining and retaining legitimacy. The EEAS is meant to support other foreign policy actors within this hybrid system of EU external relations, like the foreign ministries of EU member states and the European Commission DGs with external dossiers, but it is not meant to become a foreign ministry. At the same time, in situating the EEAS within the EU foreign policy system it is useful to remember that European foreign policy is "situated in a ´policy space´ where many of the boundaries are unclear" (Smith 2003: 558; for similar discussion on institutions not just shaped by intentional constitutional choice see Kohler-Koch 2000: 514-515). Looking at the legitimacy construction allows us to show how the EEAS finds its place within the boundaries set-up by the treaty and its stakeholders.

Understanding those processes of legitimacy construction of the EEAS and the delegation network is therefore allowing us to get a better insight in this process of political control within the EU foreign policy system. We get to better understand what different actors want the European diplomatic system

2 The foreign ministries of EU member states increasingly experienced their role and spheres of influence being diminished when it comes to the relationship with other EU members. In many member states, offices of prime ministers or chancelleries have been taken over "EU affairs", and also the role of embassies within the EU changed considerably. See Bátora & Hocking 2009.

3 The last part of Schmidt´s definition of throughput legitimacy also refers to interaction with people, which does not fit in our case. We therefore focus on the dimension of throughput legitimacy, i.e. the 'workings' of the system, "efficacy, accountability and transparency of the EU's governance processes".

to be, i.e. what the boundaries are within which the EEAS and EU delegations can situate their role construction.

3. The EEAS, EU delegations and the contested structures of European diplomacy

During the discussion prior to setting-up the EEAS and the system of EU delegations, we can observe expressions of the vastly different expectations ranging between the conception of the EEAS as a 'EU foreign ministry' on the one hand and the EEAS acting as focal point improving the collaboration on specific policy areas in external relations/foreign policy on the other hand (Morgenstern-Pomorski 2018). EU delegations' immediate transition to fully-fledged EU delegations in early 2010 was made possible also because the creation of EU diplomatic representations encountered much less resistance during the debates of the Convention and later stages of institutional creation. Another item discussed repeatedly during the Convention, the creation of a diplomatic academy as part of the new set of structures was more frequently opposed in these debates, and consequently removed from the proposals. The low level of contestation for the delegation system does not mean that no opposition existed to the outcome: The Commission on a number of occasions challenged changes in the delegation system and attempted to retain direct control over its global network during the Convention (Morgenstern-Pomorski 2018: 95-99). Nevertheless, the vast majority of contributions during the Convention saw the creation of an EU delegation system, as opposed to a system of Commission delegations, as vital element of reforms. Despite this, in setting-up the EEAS as an organisation and the legal switch to a delegation system in 2009, reactivated some of the opposition that had lost out during the Convention. Most notably the British government expressed concern over the delegations' role in speaking for the member states in international organisations and committed to "guarding vigilantly against competence creep" (Foreign and Commonwealth Office 2012). Overall, by 2009/10 a diffuse and diverse set of expectations towards the EEAS and its delegation network existed across its stakeholders. In terms of support, it is interesting to note that the EEAS received strong support from its inception to its operation as a new EU body from an unusual foreign policy actor, the European Parliament (Morgenstern-Pomorski 2018; Raube 2012).

The early years after the Lisbon Treaty show that the agreement of members' states in the Lisbon Treaty and the Council decisions establishing the EEAS are vague on objectives and allow varies possible interpretations. Roles have at this point on purpose not been clearly defined to allow for an agreement between member states. In terms of the process of legitimacy construction, there is a clear difference observable at this point between the EEAS headquarters and the EU delegations. The delegation network is more generally viewed positively and as an asset to the EU and the member states. The delegations needed to be updated and take up new roles in foreign policy cooperation and in coordinating member states diplomats on the ground (Bicchi 2018;Maurer and Raik 2018, see also Austermann 2014). Yet, they had the advantage that they were there right from the start, after a re-

designation to EU delegations with the entry into force of the Lisbon Treaty. EU delegations had to re-focus their activities to coordinate member states on the ground, inform member states´ diplomats and more generally to become the hub of European diplomatic cooperation abroad in third countries (for a comparison of what role EU delegations played before the Lisbon Treaty see Hill/Wallace 1979, Bruter 1999, or Carta 2005). The EEAS in the meantime had to be set-up in a laborious process that began with the negotiation of a Council decision in 2010 and continued in the years after. The first years of the EEAS in Brussels were thus rather focused on putting the new actor in place and shaping its role in the established foreign policy coordination arena in Brussels (pragmatic legitimacy), rather than having all attention and resources available to work on the construction of cognitive legitimacy.

Once established and working, the EEAS and its delegation network aimed at establishing legitimacy through support from the Brussels actors as well as their stakeholders in the national capitals. They did so in the face of a discourse of "cost-efficiency" and "budget-neutrality" (Council Secretariat 2009, Wright 2013). As the defined role of the EEAS and its network is vague and legal provisions do not have the same weight in CFSP as they have in public policy-making, the roles exercised by the service and its delegations remain largely dependent on this interaction with stakeholders. When the EEAS was thought up as a support to the double-hatted 'EU Foreign Minister', it was designed by a much broader coalition of stakeholders than it would later co-operate with. The agreement found at the Convention was more than the lowest common denominator; it represented a majority of view of the Convention, and was founded on a vast number of issue linkages. But it was not necessarily a view of the Member States and not necessarily a view of the European Commission, the EEAS' major internal stakeholders. As a consequence, when the EU foreign policy system was changed by these stakeholders, they sought to undermine central roles the service was thought up to fulfil. For the member states, this included a re-arrangement of chairing in Council (Vanhoonacker, Pomorska and Maurer 2011) and for the Commission, it meant an attempt to control the EEAS' hold on the delegations through budgetary procedures and staffing (Morgenstern-Pomorski 2018).

The role and exact working process of delegation network is not specified in the Treaty or EEAS decision. During the first three years, only very vague guidance on how the network should and could develop was forthcoming. Delegations had to gain legitimacy towards other EU actors on the ground, which depended very much on perspective, vision, and personality of the respective EU ambassador (Maurer & Raik 2018; Terzi 2018). In many locations, delegations attempted to develop legitimacy by "being of service" or providing some kind of "added value" to member states on the ground (Maurer and Raik 2018; Maurer 2015). In terms of legitimacy construction, it shows that the EU delegations´ attempts on the ground are very much targeted towards pragmatic legitimacy construction, i.e. to add value to member states in third countries by providing easier access to host government officials, providing information and synthesis, and an easy way to exchange with other EU member states (see also Maurer 2015). In the more regular third country settings, EU delegations found their expanded

role to be more smoothly accepted by member states´ diplomats in third countries (compared to Brussels). The level of acceptance depended in turn on the input of the EU ambassador, the personalities and EU experience of national diplomats involved, as well as third country factors (Bicchi & Maurer 2018). The recognition by the host country government and non-EU diplomats of the EU delegations further increased their legitimacy. Host governments see the added value of engaging with 28+1 at once, instead of having to contact all embassies and the EU Delegation separately. And the EU Delegation is an additional interlocutor next to the 28 member states to gain first-hand information about EU discussions. This creates an important link between throughput legitimacy and external legitimacy construction. The still scarce empirical material points out that host governments use the EU convening power often strategically: they look for it, if it is in their interest to have the EU support, they avoid it when the EU message might not be to their liking. This showed, for example, in the cases of Moscow and Washington (Maurer and Raik 2018), Turkey especially during the Gezi-park protests (Terzi 2018), or also in China (Austermann 2014).

The positive assessment of the EU delegations' efforts by most member states stakeholders on the ground is a good starting point for the construction of cognitive legitimacy, but delegations clearly struggle in constructing legitimacy in the centre of EU foreign policy cooperation: it took until the EEAS review in summer 2013 (High Representative 2013) that the European diplomatic representation in third countries have received more attention and first feedback on their efforts, and nowadays the contribution of the EEAS diplomatic network in terms of providing concise reporting directly to Brussels is considered a useful asset. Nevertheless, most difficult it is for the EU delegations to build pragmatic or cognitive legitimacy with member states capitals. For the EEAS and its delegations, it will not be possible to create such legitimacy by themselves, also considering that EU delegations did not receive any substantial increase in financial or human resources when taking over the role of coordinating the member states in third countries and representing the Union.

Legitimacy construction is considered also a key task of an organisation's leadership. In the early years, there was a lot of – often superficial but not less damaging for the EEAS legitimacy construction - criticism towards the HR/VP, or as Spence (2012: 123) summarizes diplomatically: "The EEAS's 3,700 officials have not to date been firmly directed by a clear and coherent leadership to produce legitimacy for the new diplomatic arrangements". The new HR/VP has certainly performed better in promoting herself and the institution, but the performance towards member states is assessed more critically. Similar to the EU delegations, it is easier for the EEAS to construct legitimacy within the Brussels bubble, but for a sustainable and accepted role in the EU foreign policy system this acceptance would also need to extend to the foreign ministries in the capitals of the member states.

Another observation consistent with the EEAS headquarters is the support received by delegations from the members of the European Parliament. The European Parliament has been and continues to be very favourable to the workings of the delegation network. While this may mostly be down to their appreciation of the resources of the delegations and the usefulness of their input for international visits, it is not clear whether a strong relationship with the EP will be sufficient to establish strong and long-lasting legitimacy for this organization.

4. Conclusion

The early years of the Lisbon Treaty showed that in European diplomacy the EEAS is not conceived as foreign ministry and the EU delegations while pursuing traditional diplomatic functions, have "service" towards other EU actors as central in their role construction. The literature confirms that pragmatic legitimacy (i.e. "being of service to member states" so they perceive an added-value) is a good starting point for a new actor, who does not have cognitive legitimacy yet. But, the literature also warns that an actor then has to attempt to gain cognitive legitimacy, which is more stable and not solely depending on interest calculation of stakeholders in a particular situation. This paper showed the difficulty that the EEAS and its delegation network have in constructing such cognitive legitimacy, in a foreign policy cooperation system where different stakeholders have different expectations and where their main contribution is defined by throughout legitimacy. The EEAS and its delegation in their very set-up are meant to facilitate European foreign policy making, but it is difficult for them to get their contribution recognised in this complex multi-venue and multi-actor system.

Throughput legitimacy for the EEAS and the EU delegation system is not (yet) based on governance "with the people" as the concept has been recently adapted by Schmidt (2013). Rather, it reflects the traditional throughput in a sense that the system is legitimate when and where it interacts smoothly with the member states, the European Commission and the European Parliament, or in short where it governs 'with the stakeholders'. The difference in contestation during the moment of inception, in which the delegations were very quickly accepted in their expanded role appears to have made the take-over of tasks more immediate, but not in all instances less conflictual. Contestation of the legitimacy of the delegations occurred mainly in international organisation settings, where the right to speak for the EU and the member states have been challenged. In the more regular third country settings, EU delegations found their expanded role to be more smoothly accepted by member states, although the level of acceptance depended very much on the input of the EU ambassador, the personalities and EU experience of national diplomats involved, and third country factors. Also, in places of strong Commission presence (i.e. for external assistance management), the double-hatted role of the EU ambassador is key in setting a legitimate role of the EEAS staff next to their commission colleagues. The 'service' mind-set of delegations has played a crucial part, if not in creating this acceptance, then at least in cultivating it. The deferential approach may have created a legitimacy cushion for delegations to work with to expand their

activities, but it remains to be seen whether such an approach is capable of building robust legitimacy that may be needed in conflictual diplomatic situations where minority opposition may be encountered again. Also, in terms of resources EU delegations did not receive a considerable increase in financial or human resources. Otherwise delegations will remain trapped in a role environment dependent on unanimous acceptance by member states.

Legitimacy of the EEAS and the delegation system did not arrive naturally in a state of legitimate action by treaty fiat. Instead, the contestation of these new actors continued beyond the decision to create them. This contestation in turn led both parts of the system, the EEAS and the delegations, to adopt a strongly deferential approach, focusing on a discourse set by member states of "budget neutrality" and "added value" in the case of the EEAS, and "being of service" mostly to member states, and the European Parliament, in the case of the delegations.

Funding

Support and funding for this paper was provided under the ERASMUS+ Jean Monnet Network "Addressing Needs in Teaching and Research in EU Foreign Policy" (ANTERO) Jean Monnet Network 2014-2755, ref.553172-EPP-1-2014-1-IE-EPPJMO-NETWORK.

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